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The situation in Central America: procedures for the establishment of a firm and lasting peace and progress in fashioning a region of peace, freedom, democracy and development

United Nations Verification Mission in Guatemala

Note by the Secretary-General**

1. The attached document contains the report on Human Rights of the United Nations Verification Mission in Guatemala (MINUGUA) on the verification of compliance with the Comprehensive Agreement on Human Rights. In accordance with the practice established since the Mission's inception, I shall convey a copy of this report to the United Nations High Commissioner for Human Rights, with the request that it be transmitted to the members of the Commission on Human Rights.

2. The report, which is being transmitted by the acting head of the Mission, is the eleventh on the subject, and covers the period from 1 December 1999 to 30 June 2000, during which the Mission continued to carry out its work and verify compliance with the commitments of all the Peace Agreements. The results of the verification of compliance with the Agreements were reported to the General Assembly on 26 July 2000 (see A/55/175).

3. I wish to reiterate my thanks to the Government of Guatemala and President Alfonso Portillo, who assumed office on 14 January 2000, and to the Unidad Revolucionaria Nacional Guatemalteca (URNG) for their cooperation with the Mission, without which it would have been unable to function. I also wish to express my gratitude for the ongoing collaboration and support for the peace process provided by Member States and the United Nations system in Guatemala.

* A/55/150 and Corr.1 and 2.
** The present report covers the verification period up to 30 June 2000 and includes qualitative analysis of policies and trends of the period verified.

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Annex

Eleventh report on human rights of the United Nations Verification Mission in Guatemala

I. Introduction and context

1. During the period covered by this report (1 December 1999 to 30 June 2000), the United Nations Verification Mission in Guatemala (MINUGUA) continued to verify compliance with all the Peace Agreements signed between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG). Among the Agreements, the Mission verifies compliance with the Comprehensive Agreement on Human Rights, signed on 29 March 1994 (A/48/928-S/1994/448, annex I) and with the human rights aspects of the Agreement on Identity and Rights of Indigenous Peoples, signed on 31 March 1995 (A/49/882-S/1995/256, annex). This report also refers to the commitments under the Comprehensive Agreement which were not included in the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (A/51/796-S/1997/114, annex I).

2. In order to permit continuity of statistical comparison with previous reports on human rights, the figures on complaints received and the results of verification of the complaints will cover a period of nine months, from 1 October 1999 to 30 June 2000 (see appendix). Issues arising from the follow-up to the recommendations of the Commission for Historical Clarification (see A/53/928, annex) were dealt with in the Mission's fifth report on the verification of compliance with the Peace Agreements (see A/55/175, paragraphs 20 to 22).

3. During the period under review, the first elections since the signing of the Agreement on a Firm and Lasting Peace (A/51/796-S/1997/114, annex II), were held with the participation of URNG as a political party. These elections, involving the entire national political spectrum, represented a milestone in the consolidation of democracy in Guatemala. The change of political leadership in the framework of a democratic electoral process is a further manifestation of the consolidation of the rule of law and of the expansion of political spaces, the closing of which has been regarded by the signatories to the Agreements as one of the historical causes of the armed confrontation.

4. On 14 January, Alfonso Portillo, the candidate for the Frente Republicano Guatemalteco (FRG), became president. In his inaugural speech, he stressed that the primary thrust of his policy would be to strengthen democracy and national reconciliation. He said that human rights would be a central theme in his administration, and that the overhauling of the administration of justice and the fight against impunity, within the framework of the Peace Agreements, should not be further postponed. He also underscored his intention to take up the recommendations of the reports of the Clarification Commission and the Project for the Recovery of Historical Memory (REMHI) as Government commitments. In his inaugural statement, the President of the legislature, for his part, agreed that the Peace Agreements must be made to work and that consensus must be reached so as to formulate a legislative agenda which would seek, among other things, to promote reconciliation and justice. In May, the new Secretary of the Peace Secretariat, Mr. Rubén Calderón, presented the Strategic Guidelines for the Implementation of the Peace Agreements, which consider establishing a Foundation for Peace and Harmony and the immediate restructuring of the National Compensation Programme as strategic commitments (see A/55/175, paragraph 11).

5. On 3 March, Victor Hugo Godoy, President of the Presidential Human Rights Committee (COPREDEH), informed the Inter-American Commission on Human Rights (IACHR) that the Government intended to ratify certain international human rights treaties and that it was prepared to recognize the State's responsibility in 52 cases of human rights violations that were before the Commission. He outlined the steps which the Government was planning to take in the areas of strengthening of the justice system, penal and military policy, reparation to victims and international human rights policy, noting that he was outlining the Government's new policy. The State also acknowledged its responsibility in the cases of Myrna Mack, the Dos Erres massacre and the death of the minor, Marcos Fidel Quiquinay. During the period under review, the Government began discussions with the petitioners to the Inter-American Commission, in

search of the amicable solutions envisaged under the pact of San José.

6. In the November 1999 elections, the Frente Revolucionario Guatemalteco won an absolute majority in Congress, obtaining 63 of the 113 contested seats. Since all political parties represented in Congress expressed their commitment to the Peace Agreements during the campaign, the Mission believes that there is an excellent chance to move forward in a spirit of consensus with the deferred legislative agenda arising from the Agreements. In particular, it is hoped that legal provisions will be adopted on human rights issues, such as the amendment of the Elections and Political Parties Act, the Arms and Munitions Act, laws regulating the civil service, private security companies, State intelligence agencies, the characterization of discrimination and sexual harassment as offences, and the law establishing the National Women's Institute. The Government must also take steps to include the provisions of the Convention on the Rights of the Child into domestic legislation.

7. During the period under review, it was again noted that the lack of public security is perceived by the public as a major threat to the enjoyment of fundamental rights. Growing public criticism of the police was particularly evident in May 2000 when the police failed to control disturbances which broke out during a protest against the increase in public transportation fares in the capital, leading to the dismissal of the Director of the National Civil Police. On 21 March, Congress adopted Decree No. 8-2000 authorizing the Military Police to assist the National Civil Police in public security functions. On 7 June, it adopted Legislative Decree No. 40-2000 and an act concerning support to the civil security forces, authorizing the army to collaborate with civil security forces in the fight against crime (see A/55/175, paragraph 82).

8. The Mission believes that the Government should, as a matter of urgency, take the necessary steps to fulfil its duty of guaranteeing the security of Guatemalans. It is deeply concerned that the fulfilment of commitments under the Agreements in this area has been postponed and that higher priority has been given to measures which run counter to the demilitarization of society, delay the restructuring of the army and undermine the civilian power of the State. The Mission draws attention to the impact that such measures have had in the past, when the army was put in charge of public security, taking over from the civil authorities and the National Civil Police. Furthermore, the "combined patrols" have committed their own share of human rights violations and other acts which, by their nature, are reminiscent of militarization during the period of armed confrontation.

9. Upon assuming his post on 24 January, the head of the Strategic Affairs Secretariat in the Office of the President, Mr. Edgar Gutierrez, condemned the fact that the files on the investigation of high-profile cases such as the assassination of Monsignor Juan José Gerardi and Myrna Mack were missing, and that confidential files which had been in the possession of the Secretariat had been partially destroyed. Later, the announcement by his office regarding the discovery of a large database of several hundred thousand names, and the statement that the information might have been used by the army and previous Governments to control the people of Guatemala created quite a stir. In May, *the National Security Archive*, a non-governmental organization in the United States of America, reported that documents cleared for public dissemination by the Government of the United States contained information on the participation of members of the army in human rights violations, and it handed them over to the Office of the Counsel for Human Rights.

10. In December 1999, Rigoberta Menchú Tum, winner of the Nobel Peace Prize, filed a criminal complaint in the Spanish courts for the crimes of genocide, state terrorism and torture against, inter alia, three generals and de facto former Heads of State, Oscar Humberto Mejía Víctores, Fernando Romeo Lucas García and José Efraín Ríos Montt (current President of the Congress), and Pedro García Arredondo (current Mayor of Nueva Santa Rosa). On 27 March, the Spanish courts declared they had jurisdiction over the case. Families of victims and Guatemalan organizations, including the Office of the Counsel for Human Rights, also became parties to the complaint. Subsequently, criminal charges for undermining the integrity and independence of the State, violating the provisions of the Constitution and failing to report an offence were filed against Rigoberta Menchú, by one of the defence attorneys for the soldiers accused of the Xamán massacre, in whose trial the Rigoberta Menchú Tum Foundation was a joint complainant. In addition, on 3 May, the Asociación Reconciliación para la Justicia ("Reconciliation for Justice" Association), comprised of witnesses who had

survived massacres, on the advice of the Human Rights Legal Action Centre, filed charges in the Guatemalan courts against three retired generals who had been part of the army high command, including Fernando Romeo Lucas García, former head of State, for a number of massacres committed in the 1980s.

11. The Mission said that repeated jailbreaks in Guatemala not only reveal serious shortcomings in the prison system but also aggravate society's feeling that impunity exists, and its mistrust of the competent State institutions. The escape of 15 prisoners, in a number of cases with the help of State agents, confirmed the crisis in the prison system. Since 1998, the Guatemalan army has provided security outside some prison complexes; however, under Government Agreement 87-2000, the President authorized the army to cooperate in maintaining order and security inside the facilities and jails of the country's prison system.

12. Society's perception of an increase in criminal activity during the period under review was heightened by the discovery of a large number of corpses of alleged criminals bearing signs of torture, including decapitation, possibly as part of so-called "social cleansing" and vendettas between individuals or criminal gangs. In addition, application of the death penalty was reinstituted. On 29 June, two persons sentenced to death for kidnapping and murder, who had been denied a commutation of sentence by the President of the Republic, were executed. At least seven other convicted persons may be executed this year.

13. Also filed were complaints of death threats and "selective" searches and robberies at the headquarters of social organizations. These acts of intimidation are aimed mainly at social, human rights and victims' organizations, and judges, prosecutors and journalists directly or indirectly involved in the criminal trials of agents of the State or investigations into the organization and activities of the intelligence services. Against this backdrop, on 29 May, a group of leading non-governmental human rights organizations publicly denounced this climate of intimidation.

14. Notwithstanding the praise deserved by the Government's new human rights policy and its clear willingness to move forward with the implementation of its commitments under the Comprehensive Agreement, the serious incidents described in the preceding paragraphs and the overall result of the verification show that, during the period under review, there were disturbing signs that the human rights situation in Guatemala might be deteriorating.

II. Analysis of the commitments undertaken under the Comprehensive Agreement on Human Rights

Commitment I
General commitment to human rights

Analysis of verification of the rights accorded priority under the Comprehensive Agreement

15. According to the available figures, the period covered by this report witnessed the admission of 285 complaints involving 5,225 alleged violations of the rights accorded priority under the Comprehensive Agreement and the existence of 4,863 violations as confirmed; this represents a slight increase over the previous period. Of the total number of confirmed violations, 2,692 (55.3 per cent) correspond to complaints admitted during the period under review, while 2,171 (44.7 per cent) correspond to those admitted during previous periods, whose verification process extended into the current period (see appendix).

16. The comprehensive analysis by category of right shows an increase in confirmed violations of the right to freedom of association and assembly and of political rights. Of the total number of 1,159 violations in the first case, 448 (38.6 per cent) correspond to complaints admitted during the period under review and 711 (61.3 per cent) to those admitted during previous periods. In the case of political rights, nearly all the violations were reported during the period under review and connected with the general elections. To a lesser extent, there is an increase in violations of the right to individual liberty and security of person, with 182 confirmed violations, of which 118 (64.8 per cent) were reported during the period under review and 64 (35.1 per cent) during previous periods. The number of violations of the right to life decreased, with 35 confirmed violations, of which 21 correspond to the period under review and 14 to previous periods. As for the right to integrity of person, there were 91 confirmed violations — 63 from the period under review and 28 from previous periods. Lastly, there

were 2,991 confirmed violations of due process of law, of which 1,639 correspond to complaints submitted during the period under review and 1,352 to those submitted during previous periods.

Right to life

17. During the period under review, 27 complaints involving 34 alleged violations of the right to life were admitted; 26 extrajudicial executions and 9 attempted extrajudicial executions were confirmed. Despite their numerical decline, the recurrence of such serious violations is very distressing. As for confirmed violations, there was an alarming increase in the involvement of members of the National Civil Police, on whom the main responsibility falls for such violations. As described below, the responsibility of the army was also verified in a particularly significant case of extrajudicial execution.

18. With regard to the case of the kidnapping and subsequent murder of Edgar Ordóñez Porta, which occurred in May 1999, the verification revealed the involvement of agents of the State belonging to a military intelligence unit. As indicated below, members of the military intelligence also committed actions aimed at pressuring witnesses, distorting the hypotheses of the investigation and covering up for high-ranking police authorities (see document A/54/688, annex, para. 74).

19. During the period under review there were serious cases of extrajudicial execution and attempted extrajudicial execution by National Civil Police officers as a result of excessive force by agents of the State or the illegal use of regulation firearms to attack victims. There was also a recurrence of cases in which persons arrested by the National Civil Police were later found dead. On other occasions, off-duty officers used their regulation firearms to attack or threaten victims. Particularly serious was the fact that, in addition, the perpetrators fled from the scene without lending assistance to their victims and that the facts were frequently altered in police reports to cover up for the perpetrators.

20. The repeated cover-up of the perpetrators of such violations by their superiors, who, in most cases, did not take disciplinary action or conduct the proper administrative procedures, is worrying. Even less frequently have police authorities turned them over to the Public Prosecutor's office. Such omissions have facilitated the escape of the agents involved and made it impossible to trace them. Also members of the judiciary have repeatedly favoured impunity for the perpetrators.

21. On the night of 19 April on Calle Minerva, in the city of Cobán, Denis Fredy Cucul Tun, who was under the influence of alcohol, had an argument with members of the National Civil Police because his vehicle was allegedly blocking the route of a religious procession. The police officer, Rolando Salvador Rúbio Choc, led him to the other side of the street and, pinning him against the wall with one arm, shot him in the chest at close range. The victim died in the Cobán hospital. In the police report, the officer maintained that his weapon accidentally went off in a struggle to defend himself against an attack by Cucul.

22. On 24 November 1999, Inspector Edgar Benjamín Súchite Oliva and Officer Edgar Nehemías Castillo Florián arrived at the Chiquimula bus terminal in squad car 23-001. Inspector Súchite, who was carrying an Uzi sub-machine gun, went over to three persons who were having a drink and requested José Otoniel Landaverry to stand up and be searched. When Landaverry stood up, the inspector loaded the weapon and fired it, hitting the victim on the forehead and causing his death. The inspector fled the scene while Landaverry was aided by Officer Castillo, who declared in the police report that "... Three individuals rushed towards the inspector and when he raised the Uzi sub-machine gun he was carrying, it went off". According to the forensic report, there was no gunpowder mark, indicating that the shot must have gone off at a distance of more than one metre. The witnesses and the report of the National Civil Police Office of Professional Accountability confirm that the shot had not been fired at close range, that there had been no struggle and that the weapon had been misused. On 16 February 2000, the Court of First Instance of Chiquimula ordered the arrest of Súchite, who is a fugitive. On 9 March, the National Civil Police requested his dismissal for failure to report to work.

23. On the night of 24 December 1999, Héctor Alexander Aldana Estrada, 22 years of age, was with his girlfriend in a vehicle parked at the orphanage of the village of Llano Verde de Zacapa. Three National Civil Police officers, riding in squad car 24-024 of the Río Hondo substation, arrived at the scene and surrounded the vehicle. As Aldana, seated in the

driver's seat with the vehicle door open, spoke on his cell phone, Officer Edy López shot him to death. The police fled the scene without lending assistance. The police report, signed by the Chief of the Substation, Second Officer Baudilio Natanael Brava Zapón, altered the facts by indicating that Aldana "rushed towards the officer with the intention of taking his weapon, the two of them fell to the ground and, in the ensuing struggle, the weapon accidentally went off ...". The autopsy established that the corpse did not bear any gunpowder mark, which would rule out the possibility that the shot could have been fired during the struggle. The second judge of the Court of First Instance of Zacapa, who was presiding at the time, Mynor Acevedo, ordered Officer Lopez to be released on bail subject to alternative measures, even though that was prohibited by law in international homicide trials. The incumbent judge subsequently reordered the officer's arrest and his suspension from his duties, but thus far no action has been taken.

24. In the department of Escuintla, the involvement of National Civil Police officers in serious cases of extrajudicial executions was also verified. Around midnight on 3 December 1999, on the Escuintla-Palín road, two witnesses observed that National Civil Police officers assigned to squad car 31-005 arrested Gabriel García González. Afterward, the detainee could not be found in any station of the National Civil Police. On 14 December in the vicinity of the scene of his capture, his corpse was found with the body severed from the head in a coup de gráce. The investigations of the National Civil Police Office of Professional Accountability established the identity of the patrol officers on duty at the time and place of the victim's arrest, and that Deputy Captain Álvaro René Agustín Mejía, accompanied by two officers, supervised the patrols that night. Eight months later, all the National Civil Police officers involved continue to report for work as usual.

25. On the night of 22 February 2000, National Civil Police officers Milton Eduardo Sandoval Villeda and Miguel Arturo Castro Romero of the Guanagazapa substation, while riding in squad car 31034 headed, in a drunken state, for a nightclub in Escuintla. There, Officer Sandoval reloaded his AK-47 rifle, firing a bullet from the chamber. After waiter Obdulio Israel Funes Vásquez picked up the bullet from the floor, the officer shot and killed him. On 1 March, the Criminal Judge of the Court of First Instance of Escuintla ordered the release of the officers, accepting a writ of habeas corpus from the defence. On 14 March, another order was sent out for their arrest; however, the officers had already fled.

26. On 31 May 2000, the President of the Republic commuted the death sentence of Pedro Rax Cucul, a monolingual indigenous person suffering from mental illness (see A/54/688, para. 56), to a prison term. He simultaneously denied commutation to three other convicted persons: Fermín Ramirez, in whose trial the charges had been improperly changed without giving him an opportunity to a new defence and Luis Cetín and Tomás Cerrate, in whose trial there had also been violations of basic guarantees. The latter two were executed by lethal injection on 29 June 2000. The Mission recalls that the United Nations Commission on Human Rights this year reiterated its urgent appeal this year to all States to suspend executions with a view to abolishing the death penalty. For its part, the National Supreme Court of Justice, reviewing the case, upheld two death sentences issued in the cases of seven persons convicted of kidnapping which di not involve the victims' death. As the Mission has already indicated, such sentences are contrary to article 46 of the Constitution and the American Convention on Human Rights. It should be recalled that the Constitutional Court ratified that provision in the text of the Constitution, since human rights treaties take precedence over ordinary law. In failing to apply a prison sentence instead of the death penalty, the right to life of those convicted would be illegally violated, as established by the Inter-American Court of Human Rights in its advisory opinion number 16 and, repeatedly, by the United Nations Human Rights Committee. When the Congress repealed the law governing commutation of sentences, the preamble of the repealing law and misinformation in the press gave the misleading impression that commutation of the death sentence was being abolished. The Mission reaffirms that this institution is a right recognized by the International Covenant on Civil and Political Rights and by the American Convention, and that these treaties form part of the Guatemalan law in force.

Right to integrity

27. During the period under review, 41 complaints involving 103 alleged violations were admitted, of which 91 were confirmed, most of them committed by officers of the National Civil Police. New cases of

torture, cruel, inhumane and degrading treatment and abuse of detainees, inflicted by officers of the National Civil Police, were verified. The involvement of the National Criminal Investigation Service of the police in cases of torture, in an effort to force extrajudicial confessions, was considerable. Although the number of such cases has declined, their recurrence following arrest, when the person is helpless, is disturbing. However, there was an increase in excessive use of force and abuse by the National Civil Police, which is related to the fact that disproportionate use of force is the most frequent cause of extrajudicial executions.

28. Similar-style violations occurred in the same places indicated in the previous report (A/54/688, para. 11). This shows that the police authorities did not take the necessary measures to prevent them, which entails the risk that they could become a practice of the National Civil Police investigatory bodies.

29. As the following case reveals, the acquiescence of police chiefs can reach alarming extremes. On the night of 9 February 2000, Augusto Marroquín Carreto was removed from his cell at the Quetzaltenango Pre-trial Detention Centre and interrogated by agents of the local Criminal Investigation Service, which had information linking him to the murder of another prisoner that same day. During the interrogation, they beat and tortured him in order to make him confess. The Mission verified the injuries and the testimony on the victim's screaming, as well as the presence in the jail of agents of the Criminal Investigation Service and high-ranking officers of the National Civil Police. Participating in the incident were Tránsito López Barrera, chief of the Quetzaltenango Criminal Investigation Service, and officers of that unit, Edwin Rolando Solis Cutuc and Carmelino Becerra Barrios. The Captain of the department, Mario Verduo, the Deputy Captain and Head of Personnel, Oscar Oswaldo Cerna Vidal, and the Deputy Captain of Support, Otto Pérez Angel, were present during the interrogation and allowed the torture to take place. The headquarters of the National Civil Police carried out disciplinary proceedings. In another torture case, the Mission verified that, on 5 February 2000, the above-mentioned chief of the Criminal Investigation Service of Quetzaltenango and other agents tortured Pablo Albani Edelman Bethancourt and Alex Guillermo Reyes Monterroso, asphyxiating them in an oil cloth hood in order to force them to confess to belonging to a gang of auto thieves.

30. Outstanding among the cases of confirmed cruel, inhuman and degrading treatment for which responsibility rests with the National Civil Police, was the incident in Aguacatán, Huehuetenango, on 8 January 2000. Agents of the Criminal Intelligence Service, Armando David Ajpá, Pedro Miranda Fuentes, Héctor Augusto Mérida and Deputy Inspector Juan Nolasco Ordóñez entered the home of Eric Homero Agustín Chávez without a court order, proceeded to arrest him in a violent manner and took him to the substation of the National Civil Police, where they were recently identified as agents of the Criminal Intelligence Service. With the consent of the guard, they entered a cell, where they continued to beat him and then booked him for lying and fraud after attaching a false identity card to his clothes. The forensic medical report certified that the victim had numerous injuries. Deputy Inspector Nolasco had previously been held responsible in a torture case during his previous assignment to Quetzaltenango.

31. On 7 April it was reported that an active-duty member of the military, against whom an arrest warrant had been issued in connection with the Dos Erres massacre, was arrested at the facilities of the Brigada Mariscal Zabala intelligence training school. According to the army report, he was then transferred to the Military Medical Centre, allegedly to deal with a severe psychotic disturbance. The Mission, which initially had difficulty verifying the circumstances underlying the transfer, confirmed that the person had received psychiatric treatment at the Centre, where he was administered strong doses of antipsychotic drugs. The treatment was approved by the authorities of the Medical Centre with no reasonable justification for its intensity and prolongation and was administered with the acquiescence and tolerance of high-ranking army authorities.

Right to individual liberty and security of person

32. During the period under review, 76 complaints involving 197 alleged violations were admitted; 182 were confirmed. Compared to the previous period, there was an overall increase in the number of violations. This is attributed primarily to a substantial increase in death threats, mainly by the National Civil Police and persons affiliated with the Army. It is important to note that, beginning with this report, death and other threats, which were formerly included under

the sections on right to life and right to integrity, respectively, are now included under this heading, which appears to be a more accurate reflection of the right affected by these threats.

33. Particularly serious was a case of enforced disappearance for which responsibility rests with National Civil Police officers. On the morning of 17 May 2000, in San Benito, Petén, agents of the Criminal Investigation Service in plain clothes illegally arrested Adelso Carillo Leiva, Rigoberto Pineda Agustín and Mynor Pineda Agustín, who were tortured during an interrogation for their alleged involvement in a kidnapping incident. The first two were brought before the court but Mynor Pineda is still missing. According to Carillo's and Rigoberto Pineda's accounts, as the three were being driven away, agents of the Criminal Investigation Service removed Mynor Pineda from the vehicle and took him to an unknown destination. On the basis of additional testimony which coincided with the detainee's statement, the Mission was able to confirm Mynor Pineda's arrest by the National Civil Police and the involvement of agents of the Criminal Investigation Service.

34. The complaint on the alleged enforced disappearance of university professor Mayra Gutiérrez, whose whereabouts have been unknown since 17 April 2000, is being verified. No definitive conclusion on the case could be reached based on the information available at the time this report was concluded. Nonetheless, it has been confirmed that the investigation by the Public Prosecutor's Office does not meet the criteria of objectivity, impartiality and exhaustiveness required under the Penal Code and the office's organizational law.

35. During the period under review, there was a distressing climate of intimidation, reflected in the increase in complaints of death threats and other threats. Such threats were allegedly aimed at inhibiting victims from lodging further human rights complaints at the national and international levels or from pursuing the trials of some cases with a national impact in which members of the military are implicated and investigative press reports on such cases and on military intelligence structures. The threats in question relate, in particular, to the case of Monsignor Gerardi and are directed at prosecutors, judges, witnesses, attorneys, members of human rights organizations and journalists. A judge, a prosecutor and an attorney for the joint complainant and five witnesses in that case have already left the country under similar threats. In general, such harassment was stepped up and followed common patterns, such as following vehicles, surveillance in front of victims' homes, anonymous telephone calls, the presence of armed strangers near residences, robbery and search of offices and homes, signs of intimidation, wiretapping and theft of computer files.

36. With regard to arbitrary detention or the violation of legal guarantees, a case in point was the incident in San Pedro Carchá, Alta Verapez on 17 December 1999. After 9 p.m., National Civil Police Officers Edgar Ricardo Aguilar Bac, Vicente Pop and Edin Rolando Marroquín García, assigned to squad car 51-37 of Cahabón, entered the eating establishment owned by Héctor Antonio Suyen Picón in a drunken state and ordered beer. When the owner refused to sell alcoholic drinks to them after 9 p.m., they dragged him outside, arrested him and took him to the San Pedro substation of the National Civil Police. There, the officer-in-charge realized what had happened, arrested the officers and brought them before the court. According to the forensic report, it took 15 days for the injuries to heal.

Right to freedom of association and assembly

37. During the period under review, six complaints concerning 451 alleged violations were admitted and 1,159 were confirmed. Of those, 448 correspond to complaints admitted during the period under review and 711 to complaints submitted during previous periods. Of the 1,159 confirmed violations, 754 are related to freedom of association and 404 to freedom of assembly. The judicial and executive branches of government are mainly responsible for the violations of freedom of association, and the municipal authorities, for violations of the right of assembly. During the previous period, a total of 355 violations were confirmed.

38. The Mission followed up the incidents which took place on 13 October 1999 at the headquarters of the Izabal Banana Workers Union (SITRABI) in Morales (see A/54/688, annex, para. 32). The Special Cases Unit initiated an investigation which led to the opening of oral proceedings against 24 persons accused of the crimes of unlawful entry, illegal arrest and coercion in the Second Court of First Instance of Izabal. However, the characterization of the crimes in bringing charges and in the initiating order for the oral

proceedings was not commensurate with the findings of the investigation, as it omitted circumstances applicable to the case, such as the mob and the aggravating circumstances in the crimes of illegal search and arrest. The actions of the State institutions in punishing these crimes is thus limited and constitutes insufficient protection of the exercise of freedom of association. In fact, the union leaders were forced to abandon the site, which had a negative impact on its capacity to act, and it had to appoint new leadership.

39. With regard to the complaint brought by the Judiciary Staff Union against the previous bench of the Supreme Court of Justice (A/54/688, annex, para. 34), the Mission fulfilled its mandate by investigating the alleged violation of the right to organize, without seeking to determine the legality of the work stoppage that resulted in the dismissal of 508 workers in 1999. The conclusions of the investigation were sent to the parties and to the Presidential Human Rights Commission, given the possibility that the Government might exercise its good offices. The main conclusions were that the refusal of the Supreme Court to negotiate had prevented the Judiciary Staff Union from exercising the function of collective bargaining, one of the aspects of the right to organize; that the dismissal of union leaders had violated the protection from dismissal guaranteed by their collective agreement and by article 223 of the Labour Code, since no just cause for dismissal was shown in ordinary proceedings before a competent court. Moreover, wages for March 1996 were not paid as ordered by the Constitutional Court. Subsequently, the Judiciary Staff Union complained that union dues continued to be deposited in a judicial account, because the Attorney-General's Office had contested the composition of its new executive board, and the union deemed this to be a violation of its right to control its own assets.

40. A case of particular concern involving the right to organize was the killing of Oswaldo Monzón Lima, General Secretary of the Union of Fuel Tanker Drivers, whose body was found with a bullet in the back on 23 June 2000 in Escuintla. Relatives and members of the General Workers' Union of Guatemala believe that those responsible for the deed are the owners of a firm where the victim had worked and organized a union. After being dismissed from his job, Monzón had brought a labour complaint against his former employers and had also filed a criminal complaint against them with the Public Prosecutor's Office for death threats. The Mission will verify compliance with the State's duty to investigate and punish.

Political rights

41. In November and December 1999, general elections in which the whole spectrum of political opinion in the country participated were held for the first time since the signing of the Agreement on a Firm and Lasting Peace. The results of the verification of the first round of elections on 7 November were described in the Mission's tenth report (A/54/688, para. 22 ff.). The second round of presidential elections was held on 26 December 1999, and Alfonso Portillo, candidate of the Frente Republicano Guatemalteco, emerged the victor. The general elections were held to fill the posts of President and Vice-President of the Republic, deputies to Congress, deputies to the Central American Parliament, and mayors of municipalities. The 113 deputies elected to the Congress of the Republic represent the following parties, which make up the new legislature: Frente Republicano Guatemalteco (63), Partido de Avanzada Nacional (37), Alianza Nueva Nación (9), Christian Democratic Party (2), Partido Libertador Progresista (1) and Unión Democrática/ Organización Verde (1). The Alianza Nueva Nación, an alliance of several political parties, is an outgrowth of the Unidad Revolucionaria Nacional Guatemaltec (URNG), a signatory to the Peace Agreements.

42. The Mission devoted special attention to the performance of State institutions in guaranteeing and respecting political rights and focused on detecting any acts of discrimination, intimidation and bias or propaganda on the part of government authorities. The Mission fielded verification teams in over 300 municipalities and observed more than 200 public campaign events. During the pre-election period there were fewer acts of physical violence than in 1995. However, the Mission noted incidents of varying seriousness in at least 37 municipalities, generally related to the results of elections for local office. There was also a high level of verbal violence, with constant personal attacks that obscured the necessary public debate about government programmes.

43. Despite the inadequacies of the current electoral law and infrastructure limitations in terms of premises and equipment, the Mission noted a considerable improvement in the handling of the election. Ignorance of indigenous languages on the part of officials of the

register of citizens remains a serious obstacle to the exercise of political rights by the indigenous peoples.

44. There was a substantial increase in civic participation, in terms of both registration in the electoral roll, and voter turn-out at the polls, especially noticeable among women and indigenous peoples. Although rates of new registration were higher in departments with larger indigenous populations and among women, those two groups still have the lowest percentages of registration. The gap between numbers of men and women registered is gradually shrinking.

45. There is still a need for major legal reforms and institution-building programmes in the area of voter registration and participation, in order to make the system of political representation more inclusive and the process of registration and voting easier. As has been said before, the Mission regrets that the first elections since the signing of the Peace Agreements were conducted without the adoption of the necessary reforms of the system of elections and political parties, despite their timely submittal to the Congress by the Supreme Electoral Tribunal. In that regard, the Mission allies itself with the statement made by the President of the Tribunal, when presenting the documents of office to the new officials of the executive branch, concerning the need for political, legal and financial support to bring about the reform of the system.

Right to freedom of expression

46. The effective enjoyment of this right has been called into question by complaints of threats against journalists working for the national media, threats to which the Mission is paying close attention. During the reporting period, it received complaints from the daily newspapers *El Periódico* and Nuestro Diario, the radio news programme "Guatemala Flash" and the news agency Centro Exterior de Reportes Informativos sobre Guatemala (CERIGUA). The threats against reporters for *El Periódico* occurred in connection with articles published on individuals associated with the military, particularly military intelligence, alleging the existence of a secret intelligence apparatus. The facts gathered do not rule out the possibility that State intelligence agencies are behind the harassment.

47. A case that aroused great public attention was the decision by channel executives to take the television programme "T-mas de Noche" off the air on 2 February 2000. According to the complaint, the Government had put pressure on the owner of the channel to shut down the programme because of its critical stance. The incident sparked a debate in the media, particularly the press, about freedom of expression and ownership of the broadcast television channels, especially about the de facto monopoly of channels 3, 7, 11 and 13 by one businessman with family connections in the Ministry of Communications, Infrastructure and Housing. The abandonment of the programme and the de facto monopoly were publicly criticized by the Counsel for Human Rights and the Inter-American Press Association. Meanwhile, investigation of a complaint about the abandonment of five news programmes transmitted on Jalapa local cable television until 30 March 2000 revealed that ties between the owners of the company that acquired the cable operation and the governing party might have influenced the decision.

48. In view of this situation, the Government invited Mr. Santiago Cantón, special rapporteur for Freedom of Expression of the Organization of American States (OAS), to visit the country. In his preliminary evaluation on 14 April 2000, he made a number of recommendations, calling inter alia for: (a) a thorough investigation into the de facto monopoly in broadcast television; (b) creation of mechanisms allowing for greater diversity of ownership; (c) application of clear rules to avoid conflict of interest between public officials and the communications media; (d) suspension of bidding on radio frequencies until the Agreement on the Identity and Rights of Indigenous Peoples was complied with; (e) review of the regulations on television and radio concessions with a view to incorporating democratic criteria ensuring equal opportunity for access to them; and (f) promotion of legislation on access to information and *habeas data*.

49. The bidding process has been halted, but the Mission is unaware of any specific action taken on the other recommendations. It is particularly concerned that no action has been taken to investigate the television monopoly, especially since the Government has acknowledged that a "moral monopoly" exists. A number of sectors of the society feel that such a concentration of ownership is a threat to freedom of expression and the proper functioning of a democratic system, citing the political bias of news programmes and censorship of topics that might affect the interests of the owner or persons close to him. Steps that might be taken to overcome the problem include amending

the Radio Communications Act and transferring the two State television channels to other sectors of society.

50. In the Agreement on Identity and Rights of Indigenous Peoples, the Government undertook to propose legislation to Congress amending the Radio Communications Act to facilitate the assignment of frequencies to indigenous projects and to ensure the principle of non-discrimination. However, the amendments introduced entail the award of frequencies through public bidding. The large amounts a successful bid would involve prevent access to frequencies by owners of community radio stations.

Commitment to promote rules and mechanisms for the protection of human rights

51. As a partial response to the Clarification Commission's recommendations (A/53/928), on 24 February 2000 Congress issued Legislative Order 15-2000 establishing 25 February as Victims of Violence Day in honour of the presentation of the Commission's report, "Guatemala: Memory of Silence", and in commemoration of Guatemalans who had suffered; it also called upon State agencies to take up the recommendations of the Commission that pertained to them.

52. The Code of Children and Youth was adopted in September 1996, but its implementation has been repeatedly postponed, most recently to the year 2000. To facilitate its entry into force, in November 1999 social and religious organizations concerned with children's issues, after nearly a year of debate, submitted a consensus proposal to Congress on amendments to the Code. Notwithstanding, on 24 February 2000 Congress passed Legislative Decree 4-2000 suspending the application of the Code without setting a date for resumption of debate. The Mission has said repeatedly that the current provisions, including the Juvenile Code are not in line with the contents and protection measures of the Convention on the Rights of the Child, which Guatemala ratified in 1990.

53. In the Peace Agreements, the Government undertook to apply the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, which was ratified by Guatemala in January 1984, by defining ethnic discrimination as an offence punishable by law. It also undertook to propose to Congress that sexual harassment should characterized and that any sexual offence against indigenous women, a highly vulne group, should be considered an aggravat Although a number of bills to that effect submitted to Congress, to date no progre made in passing these legislative amer combat discrimination.

Commitment II
Commitment to strengthening institutions for the protection human rights

54. During the reporting period, there was in complaints of intimidation, harassment threats against prosecutors, judges, parties and members of human rights bodies criminal proceedings against agents of the victims of such acts were some journalis news related to the functioning of the jus The victims claim that they received telephone calls, were under surveillance at of work or residence or noticed the suspicious individuals in those locations a cases had been followed.

55. Among the violations described w threats to the judicial authorities and oth involved in the Gerardi case. On 7 March, Leopoldo Zeissig was followed by associated with the Presidential General eluded the police by taking refuge in a par the grounds of the Presidential Mansion de María García Villatoro complained of thr herself and the staff of her court on 17 May she had ordered the initiation of proceed three military officers. Justice Jazmín Barr on the bench of the trial court that will hear first instance, also complained of threats 2000. Lastly, witnesses in the case con intimidation, and some were forced to country.

56. The Mission notes that the Public F Office and the judiciary still suffer fr deficiencies in their basic functions of t and judging offences. The limitations on th and independence of these institutions are interference by other State agencies and

conduct by their own officers. Of particular seriousness is the finding that parallel investigations may be conducted by bodies that have no procedural right to do so.

Commitment III
Commitment against impunity

Right to due process

57. The persistent and widespread failure of the State to fulfil its obligation to prevent, investigate and punish crimes and human rights violations and to enforce the guarantees that constitute due process of law is one of the main factors contributing to the situation of impunity prevailing in Guatemala. In order to give a comprehensive picture of the institutional components of impunity, right to due process will also be considered in this section.

58. During the reporting period, 131 complaints were admitted involving 4,034 alleged violations, of which 2,991 were confirmed. In the previous reporting period, there were 3,665 confirmed violations, more than half of them violations of due process in relation to the massacres and enforced disappearances that occurred during the armed conflict. In the reporting period, 36.88 per cent of the confirmed violations related to the obligation to investigate and punish, 25.51 per cent to obstruction of justice and 25.34 per cent to the right of access to the justice system. The complaints are chiefly against the Public Prosecutor's Office, the National Civil Police and the judiciary.

59. The justice system continues to give evidence of serious shortcomings with respect to criminal investigation and compliance with due process. In most of the cases verified, the requisite procedural steps to clarify the facts and prosecute the offenders were not taken. The procedural delays typical of the courts and the lack of coordination between the various agents of the justice system are largely responsible for the failure of the State to fulfil its obligation to prevent, investigate and punish.

60. One disturbing manifestation of the persistence of impunity in Guatemala is that most of the key cases of human rights violations that occurred prior to the signing of the Peace Agreements have still not been clarified or punished. The case concerning the forced disappearance of URNG member Efraín Bámaca was dismissed in May 1998. The lower court decision in the murder of Jorge Carpio and others was overturned in April 1999 and the three defendants were acquitted, so that the investigation had to be recommenced from the beginning. With regard to the murder of Epaminondas González Dubón, the decision of the lower court was upheld in January 2000, but no ruling was made regarding the responsibility of members of the armed forces as instigators and abettors, and the offence was treated as a common crime. In the Myrna Mack murder trial, the Supreme Court of Justice waited from 4 November 1999 to 23 March 2000 to rule on an application for *amparo* filed by the defence, which sought to have the case transferred to the military courts; the defence appealed that ruling to the Constitutional Court. In the case of the murder of Nicholas Blake and Griffith Davis, the trial court of Huehuetenango in January 2000 handed down a 28-year prison sentence against one of the presumed perpetrators, Vicente Cifuentes López, just one of the four alleged principals held in custody since 1997 (see A/54/688, annex, paras. 62 and 70).

61. In the trial of former military commissioner Cándido Noriega (see A/53/853, annex, para. 63), the Ninth Division of the Court of Appeals in February declared inadmissible the special appeal filed by the defence against the lower court decision sentencing the defendant to 240 years in prison. An application for judicial review filed by the defence in March is pending before the Supreme Court of Justice. In the trial concerning the tragic events that occurred in the community of Xamán (see A/54/688, annex, para. 58), the Criminal Division of the Supreme Court of Justice, in its ruling on the application for judicial review filed by the prosecutor on 12 April 2000, overturned the lower court's decision and ordered a new trial and the detention of the 15 military patrol defendants who had been acquitted in the appeal court.

62. In the process begun in 1994, because of the massacre occurring in 1982, at Dos Erres, La Libertad, Petén, the Mission highly values the impetus currently being given to the lawsuit, which coincides with the change in prosecutors for the case. The exhumation carried out in previous years revealed 189 victims, of whom 67 were children under 12. During that period, the testimony of two soldiers who had participated in the massacre led to the issuance of 16 arrest warrants for soldiers allegedly implicated. The warrants focused only on the National Civil Police and not the army, although several of those implicated remain on active

duty. On 11 April and 8 May 2000, motions of *amparo* were filed on behalf of six of the accused; they were granted provisionally by the Constitutional Court. The applicants maintain that their actions are covered by the provisions of article 5 of the National Reconciliation Act since they maintain that "we participated in a military operation for the purpose of impeding, pursuing and suppressing guerrilla activity". The Mission believes that the crimes investigated are clearly outside the scope of this Act, since the murder of unarmed people, including small children, cannot be considered as included in acts of armed conflict; nor is there a "rational and objective relationship" between the prevention or suppression of crime committed by the insurgents and the commission of a massacre.

63. The Mission appreciates that, in the trial concerning the Río Negro massacre (see A/54/688, annex, para. 60), the Appeals Chamber in Cobán struck down the death penalty imposed by the court of first instance, changing it to imprisonment without parole. Although the sentence only applies to three former members of a civilian indigenous patrol, it left open the case against the then commander of the Rabinal military detachment and other members of the army.

64. In relation to the kidnapping and murder of Edgar Ordoñez Porta, the Mission has adequate information on the existence of a parallel investigation conducted by military intelligence agencies, in which it is concluded that the murder can be attributed to a criminal gang and a settling of scores between drug traffickers. The investigation conducted by the Public Prosecutor's Office pursues the theory that it was a crime related to drug trafficking, and agrees with military intelligence in its approach. The theory proposed by the joint complainant, which maintains that there was involvement of elements of the army, has not been explored in an exhaustive, objective and impartial manner by the Public Prosecutor's Office. These facts cast doubt on the autonomy of the Public Prosecutor's Office in the case. As for the institutional actions of the National Civil Police, the Mission has information that high-ranking chiefs, at the time of the events, allowed witnesses to the case to be pressured into changing their statements in order to cover up the possible participation of members of military intelligence in the crime, which constitutes obstruction of justice.

65. The Mission continued to follow up on the investigation of the death of Monsignor Gerardi (see para. 9). The evidence gathered by the special prosecutor on the case was considered sufficient by the second criminal court of first instance to decide to open a case against three soldiers and two civilians involved in the incident. It is highly appreciated that the actions of the Public Prosecutor's Office and the tribunal in charge of the investigation have signified progress in the proceedings. Furthermore, the lack of cooperation by the Ministry of Defence has been verified: it has responded to various requests from the prosecutor by providing incomplete and incorrect information.

66. The Mission has analysed some of the rules and procedures which allow many of the human rights violations committed by members of the National Civil Police to go unpunished. First, the disciplinary regulations of the National Civil Police establish a distinction between minor, serious and very serious offences. The Minister of the Interior is competent to order the removal of an officer, on the recommendation of the Deputy Minister. The Director of the National Civil Police can impose any punishment other than removal from office. Among the very serious offences noted in the regulations — the only ones for which administrative inquiries are initiated — is "abuse of power and use of inhuman, degrading, discriminatory treatment or harassment against persons held in custody". Nevertheless, the final resolution of an administrative disciplinary procedure can only be obtained when a criminal sentence is upheld. It has been noted that the accused or other members of the National Civil Police have, in practice, obstructed the course of justice and undermined the guarantee of due process by: (a) altering police reports and in some cases, threatening subordinates; (b) offering victims money in exchange for dropping the criminal complaint; (c) fleeing. Thus, in many cases article 21 of the Constitution, which states: "public officials or employees and other individuals who give or execute orders in contravention of the provisions of the foregoing articles, in addition to the penalties imposed by law, shall be immediately relieved of their duties, as the case may be, and barred from any public office or employment" is not observed.

67. Particularly damaging is the persistent practice of altering police reports, which, by distorting the facts from the outset, constitutes a serious obstruction of justice. As the disciplinary regulations of the National Civil Police make no explicit mention of this, there is no penalty. It is not only a criminal offence, but a form

of clear failure to cooperate with members of other institutions of the Republic with which there are professional relations, which is considered a very serious offence under those regulations.

68. Lynchings are among the phenomena which are encouraged by impunity. During the reporting period the deplorable practice of lynching has continued, along with acts of mob violence, both spontaneous and premeditated. In the first six months of 2000, 22 lynchings or attempted lynchings were reported, leaving a total of 5 people dead and 30 injured. This indicates a decline in the number of cases compared with the figures for 1996, 1997, 1998 and the first nine months of 1999. It is in particular contrast with the worsening of the situation reported by the Mission in 1999, when a total of 100 lynchings or attempted lynchings were reported, leaving at least 48 people dead (see A/54/688, para. 63).

69. It should be noted that almost all the lynchings resulting in deaths during the period took place between 27 April and 1 May in Huehuetenango and Quiché. In the incident on 29 April in Todos Santos Cuchumatán, Huehuetenango, a Japanese citizen and a Guatemalan died; the former as a result of multiple and brutal blows from rocks and a hatchet, and the latter ferociously beaten and burned by 500 local people. At least four other persons were injured. The mob accused them of attempting to steal a child for Satanic sacrifices, based on rumours overlain with superstitions which had been circulating for several days before. After the lynchings, but before the arrest warrants were issued, the then Director General of the National Civil Police made public the names of the 19 main suspects. Only 9 of them could be arrested.

70. With regard to the lynchings which occurred in the hamlet of Tzuatzabé, Santa Lucía la Reforma, Totonicapán on 18 May 1999, and in the hamlets of Tunajá I, Zacualpa and Tunajá II, Joyabaj, Quiché, on 22 August 1999, the arrest warrants for the alleged perpetrators were not executed. In the first case, the Public Prosecutor's Office had indicated that, unless the arrests were made, the investigation could not go forward. In the second case, the arrest warrants were temporarily suspended by the Court of First Instance of Santa Cruz at the request of the Public Prosecutor's Office. The court's decision was prompted in part by the fact that the perpetrators and instigators of those incidents had considerable power and popular support and that the agents of justice were unable to go ahead with the criminal prosecution given the conflict situation that existed in Zacualpa after the murders. This suspension helped to paralyse the investigations.

71. The Mission reiterates that lynchings constitute a grave violation of such fundamental rights as the right to life, freedom and integrity of person, and the right to be tried by independent judges. Contrary to what has been stated, lynchings do not have their basis in indigenous customary law. The Mission has continued to support the efforts to prevent the practice in conjunction with the Modernization of the Judiciary Unit and with the National Civil Police, through information and training activities aimed at civilian and police officials and community leaders, as part of a long-term campaign of prevention and renewal of the civic conscience.

72. Major progress has been made in fulfilment of this commitment through the ratification of the Inter-American Convention on Forced Disappearances of Persons on 25 February 2000. It was marred, however, by the reservation to the effect that the extradition to or from Guatemala of Guatemalans alleged to be responsible for enforced disappearances would not be facilitated. This reservation is not consistent with what has been established in this commitment, nor with article 27 of the Constitution, which makes an exception to refuge and asylum in cases of crimes against humanity and violations of international law.

Commitment IV
Commitment that there are no illegal security forces and clandestine structures; regulation of the bearing of arms

73. In the Comprehensive Agreement, the parties recognized that in order to maintain unlimited respect for human rights it was necessary to combat any manifestation of such groups. At the same time, they made a commitment to continue with the purification and professionalization of the State security forces. Since its first report, the Mission has reported on the existence of those groups, entrenched in different areas of the State, and on the negative effects this has on the consolidation of the rule of law and the effective enjoyment of human rights. It has also pointed out that their activities are a key component of the impunity prevailing in the country.

74. During the reporting period, the Mission continued to verify the fulfilment of this important commitment and it has concluded that illegal security forces and clandestine groups continue to be active and that there is, as yet, no government policy to combat them. The Mission reiterates, furthermore, that the operational capacity of these groups, their links with public officials at the local and national level and the impunity which prevails for most of their actions are all factors that contribute to the people's growing perception of insecurity.

75. The cases verified indicate that clandestine State structures similar to those that existed during the internal armed conflict continue to exist, as do other structures which seem to be related to organized crime and which have corrupt ties to State apparatus, including the judicial system. A common feature of the actions of these structures is tolerance, acquiescence and even complicity of the agents of the State; they appear to be motivated by economic, political or even personal interests (see A/54/688, annex, paras. 73 and ff.).

76. The verification of the case of the self-styled "Frente Rebelde del Pueblo" ("People's Rebel Front") which operates in Quetzaltenango, indicates that the number of acts attributed to them had declined significantly and that no political motives could be established (see A/54/688, annex, para. 77). In March, the appearance of another armed group was verified, calling itself "Nueva Guerilla" ("New Guerrilla"), with similar characteristics with regard to its appearance, actions and theatre of operations, and in the past six months, the emergence of another group in El Estor, Izabal and the area of Polochic, Alta Verapáz, has been verified. In March, another armed group calling itself the "Ejercito para la Liberacion de los Pueblos Mayas" (Mayan People's Liberation Army) carried out various actions in the region of Boca Costa de Chimaltenango, Sololá and Suchitepéquez. Verification indicates that, despite the political statements customarily issued, the group is based on an old criminal structure. Nevertheless, the alignment of the leaders of the band with civilian organizations in Sololá reinforced the local perception that it could have some political aim. It should be noted that verification indicates that various members of this group had past ties with the deactivated Military Zone 14 of Sololá. The impunity of their actions is derived from the fact that they have penetrated local bodies of the State administration. The Mission points out that, despite the impact on society of their actions, to date the Government has not reacted appropriately, nor has it given the competent institutions, especially the National Civil Police, sufficient resources to combat them.

77. The Mission has verified cases where serious offences were committed for economic purposes. On 29 February, in Puerto Barrios, Izabal, Erwin Ochoa Lopez and Julio Vásquez Ramírez, legal counsel and administrative assistant in the Puerto Barrios office of the National Council on Protected Areas (CONAP), were murdered. The former had been following up on various complaints submitted by CONAP, including one against Sergio Otoniel Ponciano Garcia, for environmental crimes in Izabal, a zone listed as highly sensitive because of numerous instances of illegal logging and the construction of secret roads in support of, among other things, drug trafficking. The Mission had received sufficient indications that Ponciano Garcia, who is linked to trade in commercial air cargo, owns a private security company and is close to the departmental Governor, had made death threats against the legal counsel for CONAP because of the investigations he was conducting. The District Prosecutor of Izabal has not clarified the case and the support of the National Civil Police to the investigation has been insufficient. The CONAP offices in Puerto Barrios were temporarily closed. Given the characteristics of the victims and the significance of the case, it is urgent for State institutions to combine their efforts to clarify it.

78. Another relevant aspect is the concealment of participation or complicity, of public officials in the so-called "social cleansing" operations. With regard to the kidnapping and subsequent murder of the child Gary Castañeda in May 1999, it was confirmed that the kidnappers presented themselves as police officers to the director of the victim's school. Furthermore, verification confirmed the existence of a romantic relationship between the leader of the gang, Ana Silvia Arana Obregón, with a high-ranking officer of the National Civil Police. Later, the bodies of Arana Obregón, which was identified through DNA testing, and three Salvadorans, presumably members of her gang, were found near the border with Honduras. Verification established that members of the National Civil Police with possible ties to organized crime took part in the murders. To date, seven alleged members of the gang have been murdered with extreme violence,

which would indicate the existence of a "social cleansing" operation to cover up the ties of agents of the State to this group.

79. In the department of Escuintla the Mission verified the appearance of various bodies showing the characteristic signs of extrajudicial executions carried out as part of the "social cleansing" operation by illegal security forces or clandestine structures. Verification revealed the existence of at least three types of illegal groups related to this practice in the department. The first appears to be linked to the National Civil Police in the department and also to have support from a former military commander. The second structure appears to operate under the protection of powerful agro-industrial groups and is characterized by the systematic use of kidnapping, torture and terror, including the beheading or mutilation of the victims' bodies. The last group unites elements of a military detachment of the zone with a group of local hired assassins.

80. During previous periods, the Mission reported that 19 persons had been murdered in "social cleansing" operations on the road to Bethel, La Libertad, Petén (see A/52/946, annex, paras. 84 and ff. and A/53/853, annex, para. 71). Verification indicates that the responsibility for these acts rests with a clandestine group composed of various former military officers and led by, among others, Maximiliano Trujillo Duque, a former treasury guard. On 10 April, two witnesses in the trial were murdered when they returned to give testimony in the District Court of Petén.

81. The prison system is not spared from the activities of such groups, which enjoy the acquiescence or tolerance of the prison authorities. The Mission makes a distinction between two types of structures: on the one hand, those formed by prisoners who had been agents of the State or who had some type of link with the Government before being imprisoned; on the other, those made up of prison system officials. An example of this is the death of Gumercindo López, a prisoner convicted of kidnapping, whose body was found on 9 May with evidence of torture and unusual mutilation. López, who apparently escaped from the Zone 18 detention centre in the capital, was to have given testimony in another kidnapping trial. The Mission believes that there are strong indications to suggest that this was an extrajudicial execution which was made to look like the result of an escape and that a clandestine structure was involved. The Mission has observed that the initial investigation lacked the necessary thoroughness in view of the severity of the victim's wounds and that there were deficiencies in the actions of SIC. Moreover, the Mission encountered obstacles when it tried to gain access to the case files at the competent district public prosecutor's offices.

82. The existence of many and extensive links between organized crime and groups with political power, as well as the depth of its penetration into various sectors and its connections with criminal structures of neighbouring countries, was pointed out in connection with the so-called "Moreno case" (see A/51/790, annex, para. 33). This case serves as an example of how a hierarchical and diversified structure carried on illegal business, used a wide variety of criminal, political and economic means and resources, and had ample territorial freedom of movement and autonomy, joining with groups which exert pressure, power and influence, including State structures. With regard to the latter, the Mission has noted with great concern that public figures believed to have ties to this network, who had been keeping quiet, are reappearing in national public life and apparently hold some posts in the civil service.

83. The Mission has reiterated the seriousness of the activities of illegal structures which conduct parallel investigations, in some cases affecting the judicial process. Faced with the high crime rate, and especially the impact of kidnappings, which serve to heighten the perception of a climate of insecurity, the State has allowed persons or groups outside the competent institutions to become involved in police investigations, on the pretense of supporting prosecutors, judges and victims, and to utilize State resources. An example of this parallel system is the group known to the public as "La Oficinita", which is allegedly composed of agents and former agents of the State, professionals and individuals linked to powerful economic groups. Verification has established that, in many cases, this group conducts illegal activities either to obtain a conviction of accused criminals or even to have them eliminated.

84. In the Comprehensive Agreement, the Government pledged to disband the voluntary civil defence committees, to sever any institutional relations with the army and to ensure that they were not reconstituted so that these relations could be reinstituted. The Mission has looked into reports that these committees were being reorganized (A/54/688,

annex, para. 75 and ff.). Following verification it found that, in several cases, these new structures were in contact with military authorities or retired soldiers. It has also been verified that these groups were instigating trouble in many areas of the country and were taking part in lynchings, public security tasks through "monitoring committees" or local security boards and in acts of intimidation of and attacks on leaders or local organizations. The Mission noted with concern that, on 18 May, the outgoing chief of staff, Colonel César Augusto Ruiz Morales, in his farewell speech on retiring from active duty, called on the army to renew its contacts with these organizations.

85. The situation concerning the operations of private security companies and the lack of State control over such firms remains unchanged (A/54/688, annex, para. 78). According to the latest data provided by the Ministry of the Interior, only 77 companies are authorized to operate under the Private Police Act, that is to say, one more than in the previous period. The lack of effective oversight by the Private Security Agencies Department of the National Civil Police Directorate continues to be due in part to the fact that it does not have the resources needed to carry out its task. In that context, the ongoing verification of the deaths, on 27 April, during the demonstrations prompted by the rise in urban transit fares, of three people, including the journalist Roberto Martinez, revealed serious deficiencies in the recruitment, training and conditions of employment of the two private guards involved in the affair.

86. According to the army's Arms and Munitions Control Department (DECAM) 60,000 people own firearms; there are just under 150,000 firearms in Guatemala, of which 133,000 are defensive, 10,500 are for sports purposes and 4,400 are offensive; the remainder are collector's items. These arms were bought legally and most of them (98,000) are in the capital; a large percentage of the others can be found in the eastern part of the country.

87. According to DECAM, legal imports of arms increased by 50 per cent in 1999 the most popular being 9 mm weapons. One of the main problems is the lack of control over the purchase and use of munitions produced in the country. Despite the efforts made to reduce the number of permits issued to individuals (19,500 permits were not renewed in 1999), that leaves some 31,000 permits still in force. It should be noted that a single permit can be used to acquire several arms. Moreover, it is estimated that there are 2 million unregistered arms. The proliferation and lack of control over firearms is a continuing threat to the people's security, since the arms can easily be used for criminal acts and it is difficult for the authorities to identify the perpetrators.

Commitment VII
Safeguards and protection of individuals and entities working for the protection of human rights

88. During the period under review there was an increase in the number of threats, particularly death threats, against individuals and institutions involved in safeguarding human rights and against judicial officials linked to politically sensitive investigations. This confirms the gradual increase in the number of complaints in relation to threats noted in previous reports (see A/54/688, annex, para. 79). During the period under review the number of confirmed violations jumped from 32 to 56.

89. The first six months of 2000, which started with the change in Government, saw the greatest increase in the number of complaints of threats related to (a) the submission of complaints regarding illegal files; (b) new information on violations committed during the armed confrontation; (c) the start of new legal proceedings against former officials and former soldiers for crimes against humanity, both in the national and in the international context. The concentration and selectivity of the threats, their characteristics and the information provided helped generate a climate of uncertainty and fear, which human rights entities have repeatedly denounced during the period under review.

90. In several of the cases mentioned, the authors of the threats used tapped telephone lines and vehicles with registration plates assigned to the Presidential General Staff and had the experience and the infrastructure necessary to terrify their victims. The high operational capacity demonstrated would seem to lend credence to the suggestion that State agents tolerate, acquiesce and participate in such actions.

91. The State has done very little in reaction to this situation, in clear contravention of its duty to prevent, investigate and punish crime. The investigative organs and also the security organs have been unwilling or

unable to adequately follow up on the complaint — or fearful of doing so. In the period under review, the Mission verified that there had been no significant investigation.

92. This climate is seriously affecting the freedom of action of individuals and entities working for the protection of human rights, the independence of the administration of justice and the right to a free and independent press. The Mission expresses its profound concern at this and reiterates the need for the Government to implement the Comprehensive Agreement fully by taking effective measures to protect the victims of threats, and by investigating where the threats are coming from and punishing those responsible.

III. Final observations

93. The period covered by this report opened a new stage in the peace process for it was marked by the holding of the first elections following the signing of the Agreement on a Firm and Lasting Peace with the participation of the entire national political spectrum, as a result, the change in national and local leadership has been effected democratically and this has helped consolidate the rule of law and expand political participation. In this new context, it is necessary to consolidate what has already been achieved and to move ahead with the implementation of the broad outstanding agenda.

94. The Mission takes a positive view of the aims of the new human rights policy announced by the Government and of its public decision to move ahead with the effective implementation of the commitments of the Comprehensive Agreement. However, the findings of the verification conducted during the period under review and the qualitative analysis of these findings reveal serious crimes and situations which are having an adverse impact on the human rights situation.

Norms and mechanisms for the protection of human rights

95. Given that all the parties now represented in Congress expressed their commitment to the peace agreements during the electoral campaign, there is now an excellent opportunity to move forward, by consensus, with the postponed legislative agenda stemming from the agreements. In order to strengthen and expand the mechanisms to ensure effective exercise of human rights, it is particularly important to deal with the legal provisions, such as the reform of the Elections and Political Parties Act, the characterization of discrimination and sexual harassment as offences, the law which regulates the civil service, the law on arms and munitions, the one pertaining to private security companies, those which regulate the State intelligence agencies and the one establishing the National Women's Institute. In addition, the State must bring the domestic legislation into line with the precepts of the Convention on the Rights of the Child.

96. The Mission noted that despite legal and infrastructural constraints, there had been considerable improvement in the management of the Supreme Electoral Tribunal during the electoral process. In order to guarantee full enjoyment of political rights and surmount the traditional exclusion of broad sectors of society from political life and also to approve the reforms of the Elections and Political Parties Act, the Tribunal must consider such measures as: (a) sectoral voter registration campaigns, particularly for women and indigenous people; (b) ensuring that officials working to register voters in the interior are familiar with Mayan languages. Finally, the Tribunal must be given sufficient resources to carry out the work it has been assigned under the Constitution.

97. The Mission considers that ratification of the first Optional Protocol to the International Covenant on Civil and Political Rights, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) would be a major step forward towards fulfilment of the commitment to promote mechanisms for the protection of human rights in the Comprehensive Agreement. Recognition of the competence of the Committee against Torture and of the Committee on the Elimination of Racial Discrimination to receive communications from individuals would be a further step forward, as would considering ratification of the Rome Treaty creating the International Criminal Court.

98. The Mission takes a positive view of the Government's efforts to promote national reconciliation, and of the willingness to recognize its international responsibility expressed by the State in the Inter-American Commission on Human Rights (IACHR) in several cases of extrajudicial execution

and enforced disappearance and of the continued implementation of pilot assistance projects in various areas of the country. With regard to the recommendations of the Clarification Commission, it would be essential to move ahead with the redefinition of the National Compensation and/or Assistance Programme and with the creation of the Foundation for Peace and Harmony taking into account the initial draft which has the approval of the majority of organizations in civil society.

99. In view of the fact that the State has expressed a wish in IACHR to honour its international obligations with regard to human rights, the Government is urged to ask the Inter-American Court of Human Rights for an advisory opinion on the compatibility of the criminal laws which imposed the death penalty for various offences subsequent to the entry into force of the Pact of San José, and to declare a moratorium on any such executions pending the Court's opinion.

100. The new regulations providing for direct intervention by the army in matters of public security (Government Agreement No. 87-2000 and Legislative Decrees Nos. 8-2000 and 40-2000) are not conducive to demilitarizing society delay the restructuring of the army and do nothing to strengthen the civilian authority of the State. According to the agreements, as the Mission has repeatedly recommended, it should be made absolutely clear that the measures are exceptional and temporary, that they are subject to the authority and control of the Ministry of the Interior and that Congress has the power to rescind them.

101. Finally, pursuant to the recommendations of the OAS rapporteur on freedom of expression, the Mission reiterates that existing laws must be reviewed. In particular, it is necessary to promote the inclusion of rules which will democratize access to open television and to guarantee the right of citizens to information and to participate in the building of a democratic society, particularly in the light of the provisions of the Agreement on Identity and Rights of Indigenous Peoples.

National Civil Police

102. The National Civil Police is the institution that bears primary responsibility for human rights violations during the period under review; its agents have engaged in very serious acts of extrajudicial execution and torture and have participated in so-called social cleansing operations. The Mission is deeply concerned at the persistence of torture, especially by SIC members, and by the disregard of the recommendations on the subject contained in its earlier reports. It is essential that measures be taken as a matter of urgency to ensure that the perpetrators be investigated and punished and that further such acts be prevented. Unless the internal purification of police elements involved in serious offences and violations — a permanent commitment set forth in the Comprehensive Agreement — is completed, full enjoyment of human rights in the country will continue to be seriously hampered.

103. The Mission reiterates the need to strengthen discipline and the internal control mechanisms by increasing the staff of the Office of Professional Accountability and regionalizing its services. In order to combat the prevailing impunity, it is necessary to consider transferring all information concerning the possible participation of police elements in criminal acts to the Public Prosecutor's Office.

104. The institution must, without further delay, adopt a truly democratic policy that is respectful of the rule of law, and that is consistent with respect for human rights and the concept of public service. Some of the violations committed by police officers can be prevented by redoubling efforts to enhance police training, particularly as regards arrest procedures, treatment of those detained and proportional use of force.

Public Prosecutor's Office

105. The persistence of impunity in Guatemala is due in large measure, to the repeated failure of the State to fulfil its duty to investigate and punish crimes and human rights violations. The Mission considers that priority must be given to dealing with the inadequacies and interferences that prevent the Office from playing its role in criminal investigations and the fight against impunity.

106. In particular, effective steps must be taken to deal with the lack of coordination with the National Civil Police and to improve the way prosecutors are selected and trained. In order to strengthen the internal oversight system, combat the frequent acts of corruption and ensure that officials are qualified, it is necessary to follow a clear policy of control and

purification. These efforts must be supplemented by a mechanism to protect witnesses and persons involved in the conduct of judicial proceedings so as to ensure that the system operates effectively. In cases where there is a possibility that State agents may intervene, appropriate steps must be taken to ensure that the officials of the Public Prosecutor's Office carry out their investigations independently, exhaustively and free from all pressure and intimidation.

The Judiciary

107. Since the armed confrontation came to an end a significant number of human rights violations have been related to the administration of justice. In most of the cases which have been verified it has been found that the steps needed to clarify the facts and prosecute the perpetrators have not been taken. In fact, the vast majority of cases representative of serious human rights violations go uninvestigated and unpunished.

108. In order to eradicate impunity and to consolidate the rule of law in Guatemala it is necessary to have competent and independent judges; like the officials of the Public Prosecutor's Office these judges must be free from pressure and threats. To achieve this within the context of the agreements, it is essential to continue efforts to reform and modernize the judiciary, by introducing measures conducive to improved selection, ongoing training and stability in office of judges and magistrates and strict monitoring of compliance with due process.

109. The Career Judicial Service Act and the Civil Service Act of the Judicial Branch represent progress towards the needed judicial reform. It is suggested that the content of some of the provisions of these acts and their regulations might be improved, bearing in mind the outcome of their practical implementation under the authority of the recently established Career Judicial Service Council. The Mission also recommends consolidating the recently established mechanisms for selection and evaluation and expanding the training and refresher activities for judges.

The Executive

110. During the period under review it has been found that judges and prosecutors are being threatened and intimidated, that justice is being obstructed and that, in general, State agents are not cooperating in the investigation of serious offences and human rights violations. The Mission recalls that there is an urgent need to fulfil the commitment which the Government assumed in the Comprehensive Agreement to respect the independence and to protect the freedom of action of the Public Prosecutor's Office and the judiciary from pressures of all kinds, no matter what their origin. It is also necessary to provide the necessary resources so that they can operate efficiently.

111. During the period under review the Mission confirmed the existence of parallel investigations in the case, for example, of Ordóñez Porta and in that of Monsignor Gerardi, and that this was influencing and distorting the investigations carried out by the competent authorities of the State. The Government must fulfil strictly the commitment it undertook in the Peace Agreements, to separate military intelligence agencies from civil matters and particularly from judicial investigations.

112. The Government bears primary responsibility for safeguarding human rights, the enjoyment of which is being seriously affected by the lack of public security. The Government must turn its attention, as a matter of priority, to preventing crime and human rights violations and putting a stop to lynchings and so-called social cleansing and to establishing the Advisory Council on Security which is provided for in the Peace Agreements.

113. In view of the lynchings, the Government is urged to prepare a strategy to strengthen the National Civil Police and proper administration of justice. Strengthening traditional mechanisms and the role of indigenous authorities may contribute to the prevention of this phenomenon.

114. In order for Guatemala to return to the path of increasing respect for and protection of human rights, the Mission considers that the Government's human rights policy, as set forth by the Presidential Human Rights Committee, must be implemented as a matter of urgency. Furthermore, the Government must take into account the recommendations the Mission has made in its reports in order to give effect to its declared decision to faithfully comply with the Comprehensive Agreement on Human Rights. The Mission will pay particular attention to ensuring that the State authorities rise to that challenge.

Appendix

Statistics on human rights violations during the period from 1 October 1999 to 30 June 2000

	Reported in the period under review				Reported in earlier periods		Total confirmed in the period under review
	Complaints submitted	Violations alleged	Executions verified	Violations confirmed	Violations verified	Violations confirmed	
Right to life (A)							
A1 Extrajudicial executions or deaths in violation of legal guarantees	20	21	15	13	23	13	26
A2 Attempted extrajudicial executions	7	13	12	8	3	1	9
Total	27	34	27	21	26	14	36
Right to integrity and security of person (B)							
B1 Torture	7	13	13	12	8	7	19
B2 Cruel, inhuman or degrading treatment	9	16	14	11	15	11	22
B3 Ill-treatment	19	46	35	10	28	8	38
B4 Excessive use of force	6	28	20	10	2	2	12
Total	41	103	82	63	53	28	91
Right to individual liberty (C)							
C1 Arbitrary detention	11	31	30	23	38	25	48
C2 Detention in violation of legal guarantees	13	65	60	56	23	21	77
C3 Kidnapping	0	1	1	0	1	0	0
C4 Hostage-taking	0	0	0	0	0	0	0
C5 Enforced disappearance	2	2	1	1	2	0	1
C6 Forcible, unjust or discriminatory recruitment	0	0	0	0	0	0	0
C7 Death threats	23	46	36	25	26	15	40
C8 Other threats	27	52	23	13	180	3	16
Total	76	197	151	118	270	64	182
Right to due process (D)							
D1 Right to be presumed innocent	4	7	6	6	23	20	26
D2 Right to be judged by a competent, independent and impartial judge	3	14	14	14	84	83	97
D3 Right to be tried within a reasonable time	1	5	5	5	87	86	91
D4 Right to defence and to be assisted by a lawyer	2	61	61	61	11	11	72
D5 Right to be assisted by an interpreter	0	4	4	4	68	68	72
D6 Right not to be compelled to testify against oneself	0	0	0	0	1	1	1
D7 Right of appeal	0	0	0	0	5	2	2
D8 Right of habeas corpus	1	1	1	0	1	1	1

	Reported in the period under review				*Reported in earlier periods*		*Total confirmed in the period under review*
	Complaints admitted	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	
D9 Right of access to the justice system	26	1 400	572	572	200	186	758
D10 Obstruction of the work of the National Police, the Public Prosecutor's Office and the judiciary	22	632	603	600	171	163	763
D11 Legal duty of the State to investigate and punish	71	1 898	386	375	812	728	1 103
D12 Right to compensation	0	9	0	0	270	0	0
D13 Legal guarantees for the victim	1	3	2	2	4	3	5
Total	**131**	**4 034**	**1 654**	**1 639**	**1 737**	**1 352**	**2 991**
Political rights (E)							
E1 Right to have access to public service	1	1	1	1	2	1	2
E2 Right to be registered on the electoral roll	0	0	0	0	0	0	0
E3 Right to vote	0	0	0	0	0	0	0
E4 Right to hold political office	1	400	400	400	1	1	401
Total	**2**	**401**	**401**	**401**	**3**	**2**	**403**
Right to freedom of expression (F)	2	5	2	2	0	0	2
Right to freedom of association and assembly (G)							
G1 Right to freedom of association	3	403	402	401	173	3	404
G2 Right to organize	3	48	47	47	840	707	754
G3 Freedom of assembly	0	0	0	0	1	1	1
Total	**6**	**451**	**449**	**448**	**1 014**	**711**	**1 159**
Right to freedom of movement and residence (H)							
H1 Deprivation of documents	0	0	0	0	0	0	0
H2 Enforced population displacement	0	0	0	0	0	0	0
H3 Freedom of movement	0	0	0	0	0	0	0
Total	**0**	**0**	**0**	**0**	**0**	**0**	**0**

	Reported in the period under review				*Reported in earlier periods*		*Total confirmed in the period under review*
	Complaints admitted	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	
Violations of the Agreement on Identity and Rights of Indigenous Peoples (P)							
P1 Freedom of thought, conscience and religion	0	0	0	0	0	0	0
P2 Use of indigenous languages	0	0	0	0	0	0	0
P3 Use of indigenous dress	0	0	0	0	0	0	0
P4 Right to register names in indigenous languages	0	0	0	0	0	0	0
Total	**0**	**0**	**0**	0	0	**0**	**0**
Grand total	**285**	**5 225**	**2 766**	**2 692**	**3 103**	**2 171**	**4 863**